Third-party intermunicipal dispute resolution handbook for municipalities in Alberta

Alberta

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Alberta Municipal Affairs

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April 2021

Open Government Portal URL This publication is available online at https://open.alberta.ca/dataset/third-party-intermunicipal-dispute-resolution-handbook

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Glossary of Terms and Acronyms

Issue
This is the subject matter of the dispute.

Position
This is one party's solution to the issue being discussed based on their own interests.

Interest
These are the needs, wants, fears and concerns, which motivate people to take a certain position. They are also the items that will have to be addressed if the issue is to be satisfactorily resolved.

Consensus
Consensus is the general agreement among parties to support the solution reached by the group.

Mediation-Arbitration (Med-Arb)
Mediation-Arbitration is a dispute resolution process that combines mediation and arbitration. This is often referred to as "med-arb." Med-arb is a process where an individual or team initially mediates the dispute and then arbitrates (makes a decision on) any outstanding issues not resolved in the mediation.

Arbitration-Mediation (arb-med)
Arbitration-Mediation is a dispute resolution process that combines arbitration and mediation. This is often referred to as "arb-med." Arb-Med is a process when the arbitrator has the legislative ability to mediate the dispute or aspects of a dispute if deemed appropriate. This will be either explicitly given through an enactment such as the Municipal Government Act, the Arbitration Act, or the specific dispute resolution provisions within a particular agreement.

Arbitral Panel
An arbitral panel can consist of one to three arbitrators. A typical panel consists of one chair and two other arbitrators, however it can be more or less depending on the circumstances.
Please note: arbitrator referred to in this document refers to both singular or plural practitioners.

Acronyms

Appropriate Dispute Resolution Institute of Alberta (ADRIA)

Alberta Urban Municipalities Association (AUMA)

Alberta Rural Municipal Administrators Association (ARMAA

Association of Summer Villages of Alberta (ASVA)

Local Government Association of Alberta (LGAA)

Rural Municipalities of Alberta (RMA)

Society for Local Government Managers (SLGM)

Intermunicipal Collaboration Framework (ICF)

Intermunicipal Development Plan (IDP)

Municipal Government Act (MGA)

Municipal Government Board (MGB)

Introduction

This handbook is designed for elected officials, chief administrative officers, senior municipal staff and consultants to help understand and make informed decisions on what neutral third-party dispute resolution option would best meet their needs when resolving intermunicipal disputes.

The handbook provides an overview of the four main dispute resolution options, how to select a practitioner, and frequently asked questions.

Each dispute resolution option provides:

- description of the option
- case study
- benefits
- process overview
- an assessment checklist
- steps for each process

In each section, the process overview has an assessment checklist in step 1 to help municipalities assess if this option is appropriate for them. For easy reference, all of these checklists are compiled together within the dispute resolution option tool found at the back of the handbook.

This handbook and dispute resolution option tool for mediation, arbitration and mediation-arbitration (med-arb), and arbitration-mediation (arb-med) are to help municipalities contemplate if this is the most appropriate dispute resolution option for their dispute, situation, and municipality. These can be used by individual municipalities, or with an intermunicipal negotiating committee.

This handbook provides a basic overview and information about the dispute resolution options and does not replace legal guidance or counsel.

Not all of the options apply to every intermunicipal dispute or situation. For annexation, intermunicipal land use disputes and the creation of intermunicipal development plans (IDPs), the Municipal Government Board (MGB, is required to hear those disputes and make either a binding decision or recommendation to the Minister.

Intermunicipal land use disputes, as defined under section 690 of the MGA, and annexation disputes require municipalities to attempt mediation before going to the MGB. For these types of disputes the section on mediation will be particularly useful.

For more information about the procedural rules for these and other disputes heard by the MGB please, visit https://www.alberta.ca/municipal-government-board-overview.aspx.

Please consult with your legal counsel to fully understand your dispute resolution options with annexation, intermunicipal land use, and intermunicipal development plan disputes.

Third Party Dispute Resolution Options

Third party dispute resolution options are needed when municipalities have been unable or unwilling to negotiate or facilitate a resolution on a particular issue and require a third party to help reach resolution. In some instances, municipalities may have tried to negotiate on their own or used a facilitator, who is not a trained mediator, but were unable to reach an agreement.

Mediation, arbitration, mediation-arbitration (med-arb), and arbitration-mediation (arb-med) should be considered if some or all the following apply:

The issues:

- ☐ Are complex
- ☐ Require a high level of capacity and expertise to analyze and evaluate
- ☐ Were previously discussed and/or facilitated without resolution
- ☐ Are legislatively required (i.e. ICFs, or through a legal agreement etc.)

The relationship has:

- ☐ Medium to low levels of trust
- ☐ A history of conflict relating to the service(s) to be negotiated
- ☐ Previous intermunicipal disputes (i.e. land use, annexation, cost-sharing etc.)

As noted above, arbitration, med-arb and arb-med do not apply to annexation, intermunicipal land use disputes or the establishment of a new IDP.

Each dispute resolution option is described below to aid municipalities in making an informed decision on which dispute resolution option to use.

Mediation

In mediation, an independent mediator facilitates a discussion between two or more parties who need to resolve an issue. The mediator is a knowledgeable, neutral, process manager who is trained in conflict resolution and mediation. The mediator helps the parties communicate and negotiate more respectfully, efficiently and effectively to create an agreement. Typically, the mediator has no decision making authority, which remains with the municipalities. As a result, parties can often resolve their issue or come to a mutually agreeable solution easier than on their own.

While the mediator is actively involved in the process of mediation, it is the responsibility of the parties to bring their issues to the table, create their own solutions and make their own decisions. The mediation process seeks to develop solutions that satisfy the interests of all parties.

A Case Study

A town and its neighbouring county had a long-standing dispute over an annexation proposal. The bottom line? The town wanted more land and the county felt threatened. Both sides had a long adversarial history that included lawsuits. Mediation would allow for a solution that does not involve the courts and would satisfy both municipalities.

After a call to Municipal Affairs, the Minister met with and encouraged both groups to try mediation, and offered financial assistance as an incentive. Over five months, the parties, facilitated by the mediation team, spent 105 hours developing an annexation agreement that would resolve their concerns. To begin, each municipality formed a team of five people (three councillors and two staff) who had the responsibility of bringing forward names of potential mediators. A team of two mediators was chosen.

At the first mediation meeting ground rules were set, including when the group could meet and protocols for the meeting. Mediation meetings were held weekly and each side was to be represented by a chief elected officer (mayor or reeve), one councillor and a staff member, but alternates were also appointed. Early in the mediation process, both sides identified what the

critical issues were and why. Each issue was brought to the table and given time for discussion. Everyone was given the opportunity to speak but only one person spoke at a time. In time, they began drafting a preliminary agreement.

> *"One mediator encouraged the participants to imagine packing the past in a suitcase and leaving it at the door."*

A key to the mediation process was the focus on current and future issues. One mediator encouraged the participants to imagine packing the past in a suitcase and leaving it at the door. The approach allowed the participants to stay on-task and the final agreement not only provided for a staged annexation, but also a joint drainage study, a schedule for road transfer and maintenance, and an agreement to leave the farm land undeveloped for as long as possible.

As you can see by reading this case study, one of the major benefits of mediation is it allowed discussion to take place on a wide range of issues. Also, the skills that were developed during the mediation process were transferred to the participants, allowing them to use the same process to resolve conflicts in other situations.

Benefits of Mediation

Proven effective method for resolving conflict: mediation uses a principle-based process for resolving disputes. This method has a 90 per cent success rate over the last 20 years for intermunicipal disputes.

Experienced mediators manage the process: practitioners who have considerable experience in facilitating and managing conflict facilitate the process.

Local resolution for local issues: those most impacted by the issues at hand build the solution; this reduces tension and improves harmony between neighbours.

Clarifying complicated issues: mediation sorts through and prioritizes complicated issues and breaks them into manageable pieces.

Impartial process manager: mediators understand what motivates people to come to resolutions and are skilled at managing emotions during negotiation.

Flexibility fosters creative solutions: the group reviews new issues that arise, and determine together whether to integrate them into the discussions; this opens the door to better innovation.

Building positive relationships: when people go beyond personalities to come up with a "win-win" solution, it establishes more trusting relationships.

Agreement durability: when solutions are built through consensus, there is better buy-in resulting in long lasting agreements.

Improved workplace productivity: less unresolved conflict and better communication in the workplace promotes more effective interaction between people.

The Mediation Process

The mediation process takes a mutual gains approach to bargaining. It seeks to develop solutions that satisfy the interests or the needs of all parties. It asks the parties to clarify the position they have taken on an issue and determine the underlying needs and interests that are at the core of an issue. Rather than taking a hardball approach (the more I get, the less you get) or a soft approach (seeking a compromise to appease the other side), mutual gains negotiations strive to ensure the interests of all are met.

The parties identify as many issues, needs, concerns and priorities related to the dispute as they can, creating a maximum number of opportunities to develop a solution that satisfies all the parties. Determining what those disputed items are requires that the parties have a good understanding of all perspectives on those items in dispute.

THE MEDIATION PROCESS
Assessment
Preparation
Convening the Parties – The First Meeting
Identifying the Issues
Understanding Interests & Gathering Data
Creating & Evaluating Options
Crafting a Solution
Ratification

Step 1: Assessment

Is Mediation an Option? Mediation is an effective option for resolving disputes or differences when all or some of the following conditions exist:

- ☐ the issues are complex;
- ☐ the issue require a high level of capacity and expertise to analyze and evaluate
- ☐ the dispute has been characterized by poor communication and distrust between the parties;
- ☐ there is a history of conflict relating to the issues to be negotiated;
- ☐ there have been previous intermunicipal disputes;
- ☐ the sharing of information will lead to the possibility of a better understanding of the issues involved;
- ☐ all parties are required to implement a solution;
- ☐ the establishment of a trusting working relationship will help future interactions with the other parties;

- ☐ there is a likelihood that neither party would get what they want if the dispute went before a tribunal or courts;
- ☐ there are a broad range of related issues that an administrative tribunal or the courts might not have the ability to address; and
- ☐ there is room for collaboration and creativity.

Step 2: Preparation

Once the decision has been made to use mediation, it is important that time be spent ensuring that the necessary conditions for a successful outcome are in place.

The mediator seeks to confirm that:

1. All the stakeholders are supportive of the process and willing and able to participate.
2. There is support for the process from the municipal councils involved.
3. All participants are willing to be involved in establishing and agreeing to the rules governing the process of mediation.
4. The necessary financial and time resources are available to get the job done.
5. The participants have the basic communication skills needed to be effective negotiators.
6. Those who are not participating in the mediation and need to agree to or abide by any agreement are kept informed of the process and potential options.

(See Appendix A for a sample document that will help you establish some basic ground rules around the mediation process.)

Selecting a mediator

The mediator is selected and agreed to by all parties in the dispute. Alberta Municipal Affairs encourages parties considering the use of mediation to use a team of two mediators. The complexity of the issues being addressed, the number of participants at the table, and the time involved in the negotiations support the value of a team approach.

Referrals can be obtained from Alberta Municipal Affairs' roster of qualified private sector mediators, the ADR Institute of Alberta, or the ADR Institute of Canada.

Recommendation: To assist municipalities, Alberta Municipal Affairs has developed a roster of private sector mediators, med-arbitrators and arbitrators with the assistance of representatives from the following associations: AUMA, RMA, ASVA, ARMAA, LGAA, SLGM, ADRIA, and Canadian Bar Association Alberta – Municipal Law Subsection

https://www.alberta.ca/mediator-and-arbitrator-rosters.aspx.

Choosing the right mediator for you

Remember, the mediators will be working with you and the others during some tense times. It is important that you feel confident that the chosen mediator is knowledgeable enough to help with the issues, and that you trust the mediators will conduct a fair and impartial process.

After interviewing the mediators, take some time to reflect on their responses. How did they communicate with you? Were they good listeners? Did they ask good questions? What knowledge did they have about the dispute, its context, politics, etc.? (For a complete list of questions designed to assist you refer to Appendix B.)

When all parties are satisfied that they have chosen the right mediator(s), the mediator(s) will draw up an "Agreement to Mediate". This document will outline the mediation process, procedural guidelines and service fees, and will need to be signed by all parties.

Selecting your organization's team

Deciding who will form the mediation team within your organization is an important step in the process. Different decision-making processes require different skills on the part of the participants. If your case was before a judge or a tribunal, your primary concern would be to convince the decision maker of the merits of your case and to question the other party's case. This approach calls for an individual who is skilled at presenting the facts that support only your position.

On the other hand, mediation takes a mutual gains approach and requires effective two-way communication. Joint crafting of a resolution requires that all parties have a clear understanding

of each other's issues and interests. Parties will normally set up a negotiating team consisting of a lead representative and an alternate. Support personnel may or may not be part of the team.

For mediation to be effective, participants should:

- be effective listeners;
- be good communicators;
- be able to separate personalities from the problem to be solved;
- seek resolution that focuses on the bigger picture;
- have a good understanding of what is important to their municipality;
- be committed to an outcome that is mutually acceptable to all the parties;
- look for collaborative ways to get beyond the positions each group takes;
- be imaginative in crafting solutions; and
- commit the necessary time to the process.

Before beginning, the selected mediator will spend time with each of the individual parties to ensure that they are prepared for the negotiations. These discussions will include focusing on interests rather than positions, and providing the participants with a better understanding of effective negotiation techniques.

At this stage, the parties should ask themselves:	**At this stage, the mediator should ask:**
• *What are the options for the other parties?* • *How important is an ongoing relationship?* • *Who will represent us?* • *Is there organizational support for this effort?* (including time and money) • *What options are available if negotiations fail?*	• *Are the right parties involved?* • *Is there an understanding by the parties of the issues/topics under discussion?* • *Do the parties have a good understanding of negotiation strategies?* • *Where is the most appropriate place to hold the negotiations?* • *Is there a commitment from the parties for an initial meeting?*

Step 3: Convening the Parties – The First Meeting

During their first joint meeting with the mediator, the parties finalize the mediation agreement (Appendix C). This is signed by all the participants and outlines:

- the timeframe;
- the agreement to mediate;
- who the mediator(s) are;
- the rules of behaviour;
- the willingness of all parties to negotiate;
- the subject matter of the mediation; and
- a variety of other topics related to the process.

A separate contract may be signed with the mediator(s) detailing rates, roles, etc. (A sample "Agreement to Mediate" contract is provided in Appendix C.)

At this stage, the parties should ask themselves:	**At this stage, the mediator ensures:**
• *What ground rules have to be in place for me to feel comfortable with this process?* (See Appendix A) • *Do all the parties and the mediator understand the time lines I am under?* • *Am I clear who in my organization has to approve any final agreement?* • *Am I committed to attending the meetings?* • *Who will be my back up?* • *Do we agree with the selection of the mediator?* • *Do we want a mediator's report?*	• The agreement to mediate is in place; • The ground rules are in place and all the parties understand and are comfortable with them; • The parties have signed the agreement to mediate; • If negotiation training is required, it has been completed; and • Do the parties want a mediator's report?

Step 4 Identifying the Issues

Once the “Agreement to Mediate” contract (Appendix C) is finalized, the participants identify all the issues that need to be addressed to reach a final solution. These issues make up the agenda.

At this stage, the parties:	At this stage, the mediator:
• Identify the issues that from their perspective will have to be addressed in order to resolve the dispute; and • Ensure that all of their issues are on the table.	• Ensures that each party has had an opportunity to get their issues out on the table; and • Collates the issues into one document, which becomes the group’s working agenda.

Step 5: Understanding Interests & Gathering Data

With the help of the mediator, the parties will identify the needs or interests that underlie their position. Having a clear understanding of the reasons that drive you to a position is critical to developing the final solution. In some cases, this involves jointly selecting a consultant to do studies and provide required information, and in others, it could be a simple agreement to use data that one of the parties already has. Whatever data is used, all parties must agree to its credibility and acceptability.

At this stage, the parties:	At this stage, the mediator:
• Reflect on what is really important to them in this dispute; • Articulate to the other parties what is important to them; • Listen carefully and when necessary seek to clarify and get a better understanding of the interests of the other parties; • Identify what data they need; and	• Assists the parties in identifying their interests; • Allows each party uninterrupted time to articulate their interests (as opposed to their positions); • Works to ensure that the parties have a clear understanding of each other’s interests;

• Agree on how the data will be obtained and who will be carrying out the required studies.	• Summarizes the interests and identifies the parties' common interests; and • Ensures that there is agreement on the type of data and how it will be obtained.

Step 6: Creating & Evaluating Options

The tendency in any group is to immediately evaluate options as they are put on the table. While there is some merit to doing an immediate check to see if there is an obvious solution available, it is important to avoid doing anything that might reduce the creation of additional options. If a quick solution is not available, the group should take the time needed to brainstorm and develop as many options as possible. Once the list of options has been generated, evaluate each option and do some reality testing. Ask yourself:

- How do these options meet our interests?
- Can this option be supported by my council and to our ratepayers?

When a preferred option is selected, the mediator will often ask the parties to re-examine some of the rejected options to determine if any elements can be added to enhance the preferred option.

At this stage, the parties should ask themselves:	**At this stage, the mediator:**
• *What options exist?* • *What independent criteria can we use to evaluate the options?* • *Can this deal be sold to our constituents or ratepayers?* • *What can we do to help the other parties sell it to their ratepayers?*	• Works with the parties to ensure that all the technical information is available; • Guides the parties through an option generation process; • Works with the parties to develop evaluation criteria; • Ensures that each option is evaluated and that each party reality tests the solutions to determine whether or not it can be implemented; and

	• Works with the parties to reassess the preferred option to see if it can be improved by adding elements from some of the rejected options.

Step 7: Crafting a Solution

Once the group has evaluated all the options and ensured their interests are addressed, a final package is put together. This package reflects the differing interests of all the participants and includes:

1. the substantive components of the solution;
2. an implementation plan; and
3. an alternate dispute resolution process for use, if disagreements arise during implementation and subsequent operations.

At this stage, the parties ask themselves:	At this stage, the mediator:
• *What requirements do I have regarding implementation?* • *Does the implementation plan meet my interests?*	• Works with the parties to develop an implementation strategy including who will do what when; and • Works with the parties to develop a conflict resolution strategy to deal with unforeseen problems that could emerge during implementation.

Step 8: Ratification

Once the negotiations are complete, each party takes the agreement back to their council for ratification. This is where having kept council up to date with the mediation and any potential options being considered will really pay off. The ratification process can involve either a joint presentation by both negotiating teams to a joint meeting of all the councils involved or individual

presentations made to individual councils. In both of these cases the mediator can be involved by working with the negotiating teams to prepare their presentation materials and develop a presentation strategy.

At this stage, the parties ask themselves:	At this stage, the mediator:
• *Do the other parties clearly understand the requirements I have for ratification and what the timelines are?* • *Would a presentation by the entire negotiating team to a joint meeting of the councils involved be a good idea?*	• Ensures that all the parties have clearly articulated their ratification process; and • Provides assistance to each of the parties as needed and agreed to by all.

Arbitration

Arbitration involves an outside party making a binding decision that resolves a dispute between the parties. Arbitration is a quasi-judicial process in which a third party renders a decision after receiving and hearing evidence from the parties involved in the dispute. The decision is binding on all parties.

In arbitration, the disputing parties agree that one or several arbitrators, in a panel, can make a decision about the dispute after receiving their evidence and arguments from the parties.

Arbitration is different from mediation because the neutral arbitrator has the authority to make a binding decision about the dispute and, unlike mediation, arbitration is intended to be an adversarial process where one party will “win” and one party will “lose”.

The arbitration process is similar to a trail in that the parties make opening statements and present evidence to the arbitrator and a decision is rendered. Compared to traditional trails,

arbitration can usually be completed more quickly, more cost-effectively and is generally less formal.

Arbitrations in Alberta are guided by the *Alberta Arbitration Act* unless other legislation exempts it or the parties agree otherwise.

For Intermunicipal Collaboration Framework (ICF) and Intermunicipal Development Plan disputes please refer to the ICF workbook and *Municipal Government Act* for more guidance as there are specific requirements.

ICF workbook link: https://rmalberta.com/wp-content/uploads/2020/09/ICF-Workbook-Version-3-FINAL.pdf

A Case Study

A town and its neighbouring county failed to come to an agreement on funding of a new recreational facility. The town wants the county to pay its share for the facility, as a large proportion of county's residents use the new recreation facility. Mediation was attempted, but was not successful. Following their dispute resolution clause in their recreation services agreement, the municipalities hired an arbitrator within a specified time frame using a selection committee.

The parties created a selection committee to choose an arbitrator. The arbitrator works with the parties and their representative to design an agreed upon arbitral process including timelines, whether an oral hearing would be required, and if rules of evidence would apply.

The disputing parties presented their evidence (made up of oral testimony, documents, and physical evidence) and arguments (oral and written) to the arbitrator(s) who are often referred to as the Arbitral Panel. Four months following commencement of the arbitration, the Arbitral Panel issued its Final Award and the parties implemented it.

Benefits of Arbitration

The Opportunity to choose an arbitrator: parties have an opportunity to select their own arbitral panel based on criteria of their choosing which often includes; background, education and experience of the proposed arbitrator.

Speed: Arbitration is often fast, and a time limit can be placed on the length of the process.

Flexibility: the arbitral process can be formal or informal as the parties and their counsel determine, subject to procedural fairness being honoured and any statutory requirements, such as those imposed by the *MGA* and the *Arbitration Act*.

Prevents lingering disputes: Unlike in any court's decision, there are very limited avenues for appeal to an arbitral award, which limits the duration of the dispute and any associated liability.

Finality: Arbitral awards are binding on the parties and provide finality.

The Arbitration Process

According to the federal Department of Justice, arbitration occurs in one of three situations: "where an arbitration agreement exists in a contract out of which a particular dispute arises; where disputing parties agree to arbitrate a dispute even though no prior arbitration agreement exists; and where a statute imposes an obligation to arbitrate."

THE ARBITRATION PROCESS
Assessment
Choosing an Arbitrator
Preparation
Preliminary Hearing – The First Meeting
Submission of Evidence / Exchange of Exhibits Statements of Position
Arbitration Hearing
Award
Implementation of Award

Step 1 Assessment – Is arbitration an option?

Arbitration is an effective option to resolving disputes or differences when all or some of the following conditions exist:

When the municipalities:

- ☐ have a genuine issue between them that they can't resolve
- ☐ interpretation of an agreement, contract or legislation differ
- ☐ have attempted mediation
- ☐ fully understand the other's perspective on the dispute
- ☐ understand where they have agreement and disagreement
- ☐ have reached an impasse

In most intermunicipal disputes, attempting mediation is recommended because there is a 90 per cent success rate over the last 20 years when municipalities have attempted mediation.

Step 2 Selecting an Arbitrator or Arbitral Panel

Selecting an arbitrator(s): One of the most important aspects of the arbitration process is the selection of an arbitrator(s). Depending on the situation and complexity of the dispute, parties may want to choose a single arbitrator to make a decision or create a panel with a chair to hear the evidence.

Recommendation: To assist municipalities, Alberta Municipal Affairs has developed a roster of private sector mediators, med-arbitrators and arbitrators with the assistance of representatives from the following associations: AUMA, RMA, ASVA, ARMAA, LGAA, SLGM. ADRIA, and Canadian Bar Association Alberta – Municipal Law Subsection

https://www.alberta.ca/mediator-and-arbitrator-rosters.aspx

Referrals can be obtained from Alberta Municipal Affairs' roster of qualified private sector arbitrators, legal counsel, the ADR Institute of Alberta, or the ADR Institute of Canada.

Choosing the right arbitrator for you: It is important you feel confident the chosen

arbitrator(s) is sufficiently knowledgeable to understand the issues, and you trust the arbitrator(s) will conduct a fair and impartial process.

Before choosing an arbitrator, disputing parties should investigate the expertise and competency of candidates before their names are put forward for appointment. A few attributes desirable in an arbitrator are as follows:

- sufficiently understands the subject matter of the dispute to provide context to the evidence as presented;
- ability to hear and weigh evidence presented by the parties;
- able to quickly understand evidence and arguments provided by the parties;
- clear decision writing abilities with good reasoning in final awards;
- thorough knowledge of the arbitration process;
- impartial, fair and free from bias; and
- able to communicate effectively, both verbally and in writing.

Although subject matter expertise may assist an arbitrator to get up to speed quickly relative to context, parties must understand that the arbitral panel will make their decisions based on the evidence presented by the parties and not based on any arbitral member's own background and experience with the issues.

When all parties are satisfied that they have chosen the right arbitrator, the arbitrator(s) will draw up an "Arbitrator's Agreement." This document will outline the arbitration process, procedural guidelines, and service fees, and will need to be signed by all parties.

It is important that the parties understand that once an Arbitrator has accepted their appointment, one party cannot "fire" the arbitrator. The hearing will proceed with that arbitrator unless there is agreement of both parties to remove the arbitrator. Please note that an arbitration commenced under the *MGA*, Intermunicipal Collaboration Framework section may void this provision in the *Arbitration Act*, whereby only the Minister can remove the Arbitrator once it is commenced.

At this stage, the parties should ask themselves:	At this stage, the arbitrator asks:
• *Do we need legal representation?* • *Who will represent us?* • *Is there organizational support (including time and money) for this effort?* • *Do we agree on the selection of the arbitrator?* • *What legal representation will we need?* • *Who is paying for the arbitrator and what is the arrangement for allocation of those costs?*	• *Are the right parties involved?* • *Is there legal representation?* • *Do the parties have a good understanding of arbitration?* • *What is the most appropriate process for the arbitration (written, oral and hybrid submission of evidence)?*

Step 3 Preliminary Hearing/Preparatory Conference (Identifying the Issues)

Once an arbitrator is chosen, all parties and the arbitrator typically hold a first meeting. The parties may also retain legal counsel to attend at the arbitration and represent them. The initial meeting, sometimes called a *preliminary hearing*, gives the participants a chance to discuss and clarify any outstanding issues regarding the arbitration process, such as:

- identifying the issues in dispute,
- determining what form the arbitration will take: that is, an oral hearing, or in writing,
- the scheduling of all events, including the date and place of the arbitration hearing, and
- identifying and listing witnesses and any experts that will be called.

The preliminary hearing could be held in person, by telephone, or by videoconference depending on what is most appropriate for the situation.

The meeting provides the participants with an opportunity to address and negotiate how the arbitral process will advance. It is at this stage that most decisions are made regarding the mechanics of the arbitral process itself.

At this stage, the parties should ask themselves:	At this stage, the arbitrator:
• *What processes are important to me to ensure that I can fully present my case to the arbitral panel?* • *Do I understand the arbitration process and am I comfortable engaging with the process?* • *Do all the parties and the arbitrator understand the timelines?* • *What, how and when documents will be shared?*	• Understand what issues are in dispute between or among the parties; • Be confident that procedural fairness can be obtained based on the steps and timelines set out and agreed upon by the parties for the arbitral process; and • Be able to communicate effectively, both verbally and writing.

Step 4 Submission of Evidence/ Exchange of Exhibits

The efficient exchange of information is essential to all dispute resolution processes to ensure there is no delay that occurs in any resolution process. Arbitration provides the opportunity for the parties to limit the potentially obstructive aspects of the litigation process. This can be accomplished through the imposition of mutually acceptable time limits for the appropriate exchange of information.

At this stage, the parties:	At this stage, the arbitrator:
• Reflect on what really is important to them in this dispute; • Identify with the lawyer(s) the type of evidence to submit;	• Ensures all evidence in the party's possession or control that is relevant to the issues is disclosed to the other party ; and

• Submit all evidence that is relevant to the issues and particularly the evidence required to substantiate their position; and • Ensure that their evidence is submitted within the submission timeline.	• Ensures that there is mutually acceptable timeline for the exchange of information.

Step 5 Arbitration Hearing

If it is agreed to by the parties and the arbitrator that there will be no oral hearing, the parties will submit all evidence to the arbitrator in writing, the arbitrator will examine documents and render a decision. The arbitrator may ask for further documents or explanations from the parties with regard to the documents being examined.

Often, the parties will request an oral hearing. At the hearing, each party's case is made up of evidence that typically includes testimony, documents and physical evidence. Each party presents their case, evidence, and witnesses may be examined. Depending on the complexity of the case and the monetary value at stake, the parties may choose to hire lawyers to represent them at the arbitration.

At this stage, the parties should ask themselves:	**At this stage, the arbitrator:**
What evidence do I need to present to the arbitrator to properly and fully present my case?	• Ensures that each party shall be treated with equality and each party shall be given a full opportunity of presenting their case.

Step 6 Award

Once the arbitration has taken place, the arbitrator will make its decision in the form of an award. Unless agreed otherwise by the parties, the decision of the arbitrator is in writing and it is final

and binding on the parties with few exceptions. Unless the parties agree otherwise, the arbitrator's decision will provide reasons.

Among other things, the decision may involve:

- ordering specific action to be taken, such as having one party make a payment to the other,
- ordering an injunction against specific actions,
- monetary awards (which may include one party paying the other party's costs of arbitration, plus interest).

Subject to applicable legislation and any arbitration agreement that may exist between the parties, the decision of an arbitrator may be appealed to a court of law on very limited grounds.

Did You Know? In section 708.48(5) of the *MGA*, Intermunicipal Collaboration Frameworks (ICFs) arbitration awards can only be reviewed by the Court of Queen's Bench on a question of jurisdiction and the application for judicial review must be made within 60 days after the award is made.

Section 708.41(1) and (2), provides direction on how to apply the costs of an arbitrator for an ICF dispute.

At this stage, the parties:	At this stage, the arbitrator:
• Review the award; and • Ensure that they understand what is needed to implement the award into a bylaw by asking arbitrator for clarifications. • Make a decision whether an appeal is warranted • Decide how best to implement the arbitrator's decision.	• Issues an award to the parties

Step 7 Implementation of Award

Once the arbitration hearing is complete and a decision awarded, each party takes the award back to their council for implementation.

Mediation-Arbitration (Med-Arb)

Mediation-Arbitration is a dispute resolution process that combines mediation and arbitration. This is often referred to as “med-arb.”

Med-arb is a process where the parties agree to hire an individual or team to initially mediate the dispute and then arbitrate (make a decision on) any outstanding issues not resolved in the mediation.

The med-arb process guarantees that at the end of the process the dispute will be resolved. Even if disputants are unable to reach a settlement on their own through mediation.

Case Study

A small-sized town and its neighbouring county had a dispute on fire services. Their intermunicipal relationship had been strained for the last two terms of the councils over the cost sharing for fire services.

After exploring various dispute resolution options with the Municipal Affairs Intermunicipal Relations team, the CAOs were encouraged to try Med-Arb because they anticipated that it might be hard to reach full consensus on all the issues and that they may need an arbitrator to make a final decision on any outstanding items.

Each municipality formed a negotiating committee of 4 people (CAO, two council members and a senior manager) who had the responsibility of bringing forward the names of potential Med-Arb practitioner. The committee decided to hire a team consisting of a mediator and an arbitrator.

Ground rules were set and the parties signed a written agreement with the Med-Arb practitioners. The written agreements set parameters on when to transition from mediation into arbitration during the Med-Arb process. Through the process, the parties agreed to timeline where they would move into arbitration if they were not able to reach an agreement through mediation and

that they would have the mediator produce a report of what items were agreed to and which ones would need a decision by the arbitrator.

In the following six months, the parties agreed to most of the outstanding issues around fire services except for the issue of compensation. A mediator's report was produced that the parties agreed to use as evidence for the arbitrator. This report provided the principles, what particular fire facilities, equipment, services, capital and operating costs would be shared, and what remaining issues they wanted the arbitrator to make a decision on.

The mediation process was concluded and the matter was referred to the arbitrator, an award on the dispute was rendered, within four months of the commencement of the arbitration and the parties implemented the award.

Benefits of Med-Arb

Relationship building: Because parties are able to discuss in the presence of a professional mediator, the process is likely to preserve relationship or even repair those that may have been damaged by previous discussions on controversial topics.

Control: During the mediation phase, parties have control over outcome and may find a win-win solution.

Certainty: A decision is certain, because if mediation fails, an award will be rendered.

Seamless transition: The transition from mediation to arbitration is seamless and takes less time than hiring a mediator and arbitrator separately.

Efficient: It is less costly and quicker than court or selecting a mediator and then an arbitrator. A mediator's report that outlines the remaining issues that require a decision provides further efficiencies.

Choice: There is an added incentive to resolve in mediation since the unresolved issues are automatically decided in arbitration, where the parties have less control of the outcome.

Med-Arb Process

There are generally two common ways a med-arb process can be conducted. However, various practitioners may vary the processes to suit the dispute, parties involved and the situation.

- Sole Practitioner: Hiring one person who is the mediator in the process and then will arbitrate if the parties cannot come to an agreement
- Team Approach: The other method is to have one mediator and one arbitrator working as a team. Whereby the arbitrator is involved with the joint meetings to help facilitate and the mediator is involved in the individual caucus and preparation meetings with the municipalities.

Please review the mediation and arbitration sections for a better understanding of mediation and arbitration processes.

Step 1: Assessment – Is Med-Arb an Option?

This option should be considered when there are similar conditions as listed above under Mediation, and the municipalities:

- ☐ Anticipate some issues in the dispute will remain unresolved in mediation and will require an arbitrated decision
- ☐ Are comfortable having the same person/people that mediated the issues arbitrate the decision
- ☐ Want a quick transition to arbitration if needed

The med-arb process needs to be agreed upon prior to starting the process because the practitioner will manage the process differently if they may need to arbitrate any issues not resolved in mediation. The practitioner needs to ensure the necessary protocols and procedures are taken to ensure removal of bias, address confidentiality, clearly defining expectations and transition points. As such, the decision to hire a med-arbitrator should be made at onset to ensure the proper procedures and protocols are in place prior to commencing.

Prior to embarking on a med-arb process, it is imperative that certain decisions be made by the parties before the med-arb process begins. These decisions should be reflected in a written agreement among the parties and the med-arbitrator before the med-arb begins.

Note:

Interest Based/Facilitative or Transformative Mediation are effective options to use as part of the med-arb process. Interest based mediation tends to not require the parties to disclose “evidence”, but rather focuses on the motivating factors behind the positions taken by the parties. Therefore, it can be very effective in the med-arb process. Interest based mediation tends to leave disclosure of evidence to the arbitration phase of the med-arb process which is easier to handle from a procedural fairness perspective.

Evaluative Mediation is not recommended for this process if the med-arbitrator is one and the same person. Evaluative mediation allows the mediator to voice their opinions regarding the strength and weaknesses of each party's case. Once this has been disclosed by the med-arbitrator, it is typically very difficult for the parties to see the med-arbitrator as a neutral decision maker for the arbitration. Mediators who choose to use evaluative mediation should seriously consider not arbitrating in a med-arb process.

Step 2: Preparation

Once the decision has been made to use med-arb, it is important that time be spent ensuring that the necessary conditions for a successful outcome are in place.

The med-arbitrator seeks to confirm that:

1. All the stakeholders know and understand the med-arb process and are supportive of the process and willing and able to participate.
2. There is support for the process from the municipal councils involved.
3. All participants are willing to be involved in establishing and agreeing to the rules governing the med-arb process.
4. The necessary financial and time resources are available to get the job done.
5. The participants have the basic communication skills needed to be effective negotiators.

Step 3: Selecting a med-arbitrator

It is recommended only those holding a Chartered Mediator, Chartered Arbitrator and Chartered Med-Arb designation (or equivalent) be selected to provide med-arb services. This is because the med-arb process is a specialized process and should not be conducted by anyone who is not well trained and well versed in both the mediation, arbitration med-arb processes.

After interviewing, take some time to reflect on their responses. For a complete list of questions designed to assist you in choosing an arb-mediator, refer to Appendix B.

The med-arbitrator is selected and agreed to by all parties in the dispute. Alberta Municipal Affairs encourages parties considering the use of med-arb to use a team of two professionals. The

complexity of the issues being addressed, the number of participants at the table, and the time involved in the negotiations support the value of a team approach.

Arbitration-Mediation (Arb-Med)

Arbitration-Mediation is a dispute resolution process that combines arbitration and mediation. This is often referred to as “arb-med.”

Arb-Med is a process when the arbitrator has the legislative ability to mediate the dispute or aspects of a dispute if deemed appropriate. This will be either explicitly given through an enactment such as the *MGA,* the *Arbitration Act,* or the specific dispute resolution provisions within a particular agreement. For example, the *MGA* specifically gives an arbitrator the ability to mediate an Intermunicipal Collaboration Framework dispute.

The Arb-Med process allows the arbitrator to determine with the parties if a mediation would be appropriate. Please note that an arb-med process may be carried out be a sole practitioner or team.

If deemed appropriate, the arbitrator would typically stay the arbitration proceedings and conduct a mediation with the parties on the dispute or aspects of the dispute.

If mediation results in an agreement, an arbitrator would typically reopen the arbitration and make a “consent award” based upon the areas of agreement reached in mediation.

Any outstanding items not resolved in the dispute would then be heard by the arbitrator and the arbitrator would make an award on those items. Hiring a practitioner that is qualified to conduct mediations and arbitrations provides the opportunity for the same person to conduct an arb-med process if deemed appropriate.

Please consult with your legal counsel to determine if arb-med is an option for your particular dispute.

Case Study

A mid-sized town and its neighbouring county had an Intermunicipal Collaboration Framework (ICF) that they were not able to reach an agreement on and were required legislatively to go to

arbitration. The municipalities had been able to reach agreement on every service in their ICF except for cost sharing for recreation, fire services and the airport.

The municipalities needed to go to arbitration because of legislative time limits however, felt that if they had more time they could be able to get an agreement on the outstanding services.

After exploring various dispute resolution options with their legal counsel, it was suggested the municipalities could jointly ask the arbitrator to mediate two of their three outstanding services. The agreed they wanted to hire a practitioner who was a chartered arbitrator and chartered mediator in the hopes that the arbitrator would agree to mediate their dispute or stay the arbitration for a period of time to allow them to mediate those two areas of dispute.

The municipalities then selected a practitioner that was an arbitrator and mediator and had experience conducting an arb-med process.

At the preliminary hearing, the parties through their lawyers asked if the arbitrator would consider mediating their airport and fire services dispute as they felt those items might be resolved through mediation and for the arbitrator to make an award on compensation of recreation services.

The arbitrator agreed to mediate their fire services and airport dispute and set the parameters and timelines for the arbitration on their recreation services. The arbitrator decided to stay the arbitration for three months while the parties mediated the fire services and airport dispute.

The municipalities resolved their fire services and airport dispute within the three months. The arbitrator reconvened the arbitration and made consensual awards for the fire services and airport dispute. The arbitrator then followed the procedures and timeline set out in the preliminary hearing on compensation for recreation services.

The disputing parties provided the arbitrator with both an oral statement and written statements in a form to present their case on compensation for recreation. After four months since the re-commencement of arbitration, the rendered a decision and the parties implemented the binding decision.

Benefits of Arb-Med

Relationship building: Because parties are able to discuss in the presence of a professional mediator, the process is likely to preserve relationship or even repair those that may have been damaged.

Control: During the mediation phase, parties have control over outcome and may find a win-win solution.

Certainty: A decision is certain, because if mediation fails, a Final Award will rendered.

Seamless transition: The transition from arbitration to mediation and back to arbitration is seamless.

Arb-Med Process

There are generally two common ways an arb-med process can be conducted. However, various practitioners may vary the processes to suit the dispute, parties and the situation.

- Sole Practitioner: The selected arbitrator decides to mediate the dispute.
- Team Approach: The other method is to have one mediator and one arbitrator working as a team. Whereby the arbitrator is involved with the joint meetings to help facilitate and the mediator is involved in the individual caucus and preparation meetings with the municipalities.
- Arbitrator directs parties to mediation: The other method is the arbitrator directs the parties to mediation and stays the arbitration for a period of time and reconvenes the arbitration.

Please review the mediation and arbitration sections for a better understanding of mediation and arbitration processes.

Step 1: Assessment – Is Arb-Med an Option?

This option should be considered when there are similar conditions as listed above under Mediation, med-arb, and the municipalities:

- ☐ Anticipate some issues in the dispute could be resolved in mediation and just require a few months to resolve them
- ☐ Are comfortable having the same person/people that mediated the issues then arbitrate the decision
- ☐ Want a quick transition from arbitration to mediation and back to arbitration

The arb-med process needs to be agreed upon prior to starting the process because the practitioner needs to have the knowledge, skills and abilities to arbitrate and mediate.

As well, the practitioner will manage the process differently to ensure the necessary protocols and procedures are taken to ensure neutrality if it is determined that a mediation is appropriate. As such, the decision to hire an arb-mediator should be made at onset of hiring.

Prior to embarking on an arb-med process, it is imperative that certain decisions be made by the parties before the arb-med process begins. These decisions should be reflected in a written agreement among the parties and the arb-mediator before the process begins.

Please note that hiring a practitioner that can arbitrate and mediate does not guarantee the arbitrator will decide to mediate the dispute. Consult with your legal counsel to fully understand your options and parameters around arb-med.

Step 2: Preparation

Once the decision has been made to use arb-med, it is important time be spent ensuring the necessary conditions for a successful outcome are in place.

The arb-mediator seeks to confirm that:

1. All the stakeholders understand, are supportive and able to participate in the process.
2. There is support for the process from the municipal councils involved.
3. All participants are willing to be involved in establishing and agreeing to the rules governing the arb-med process.
4. The necessary financial and time resources are available to get the job done.
5. The participants have the basic communication skills needed to be effective negotiators.
6. The arbitrator has the background and experience and is willing to, mediate or the legislative ability to mediate the dispute.

Step 3: Selecting an arb-mediator

It is recommended only those holding a Chartered Mediator, Chartered Arbitrator and Chartered Med-Arb designation (or equivalent) be selected to provide arb-med services. This is because the

arb-med process is a specialized process and should not be conducted by anyone who is not well trained and well versed in both the arbitration, mediation and arb-med processes.

Referrals can be obtained from Alberta Municipal Affairs' roster of qualified private sector arb-mediators, the ADR Institute of Alberta, or the ADR Institute of Canada.
Alberta Municipal Affairs' roster is available online at: www.alberta.ca/mediator-and-arbitrator-rosters.aspx.

Choosing the right arb-mediator for you

Remember, the arb-mediator will be working with you and the others during some tense times. It is important that you feel confident that the chosen arb-mediator is knowledgeable enough to help with the issues, and that you trust them to conduct a fair and impartial process.

After interviewing, take some time to reflect on their responses. For a complete list of questions designed to assist you in choosing an arb-mediator, refer to Appendix B.

When all parties are satisfied they have chosen the right practitioner, the arb-mediator will draw up an "Agreement to arb-mediate". This document will outline the arb-med process, procedural guidelines, and service fees, and will need to be signed by all parties.

Please note that hiring a practitioner that can arbitrate and mediate does not guarantee the arbitrator will decide to mediate the dispute. Consult with your legal counsel to fully understand your options and parameters around arb-med.

Conclusion

The previous sections provided an overview of the four main dispute resolution options available to municipalities when they are unable to come to an agreement on a particular intermunicipal dispute on their own. In addition to this base knowledge and understanding of the four options, in the following section is a dispute resolution options tool with two worksheets municipalities can use to help decide which dispute resolution option they want to use to resolve their intermunicipal dispute.

For more information about your dispute resolution options, you can contact Alberta Municipal Affairs Intermunicipal Relations team toll free at 310-0000, and then dial 780-427-2225.

Appendix A: Dispute Resolution Option Tool

Dispute Resolution Options Considerations

Purpose: To assist two or more municipalities to understand and determine the most appropriate dispute resolution option(s)Municipalities have four main dispute resolution options:

1. Mediation
2. Arbitration
3. Med-arbitration (med-arb)
4. Arb-mediation (arb-med)

For annexation, intermunicipal land use disputes and the creation of intermunicipal development plans, the Municipal Government Board is required to hear those disputes and make either a binding decision or recommendation to the Minister.

Please consult with your legal counsel to fully understand your dispute resolution options with annexation, intermunicipal land use and intermunicipal development plan disputes.

It is critical to jointly determine the most appropriate dispute resolution option(s) at the outset of the process as this will ensure the most efficient use of time and resources to address your issues.

Instructions:

Answering the questions below will help a municipality determine what dispute resolution process may be best suited to their ICF negotiation process. Use your answers to the questions to help inform your completion of the checklist found later in this tool.

1. A major indicator of the extent to which your negotiation may require external dispute resolution support is the pre-existing relationship between the municipalities involved:

    i. Do the municipalities have a history of tension in regional land use and service delivery discussions?

    ii. Do the municipalities have a history of collaboration?

    iii. Do the “personalities” involved in negotiations have a history of

approaching intermunicipal planning in a collaborative or combative manner?

2. The complexity of the services that require dispute resolution will inform the type of support needed:
    i. Do the municipalities have a history of successfully collaborating together?
    ii. Are the services being discussed complex? Do service levels and costs vary widely between municipalities?

3. What information is needed to effectively deal with negotiations on the outstanding services that may require dispute resolution:
    i. How are the municipalities going to get the required information?
    ii. Do the municipalities have in-house resources and subject matter expertise, or will contracted resources or experts be needed?

4. One of the major considerations in determining your dispute resolution options is the timeline for completing your ICF.

    Consider against the deadline:
    i. How long is each process going to take?
    ii. How much time and resources are you willing to dedicate to each dispute resolution option?

Fill out the checklists below and before answering, this final question:

5. Given the dispute resolution options and the outstanding issues, what dispute resolution options would be effective and efficient to resolving these services and completing your ICF?

Dispute Resolution Options Checklist

Instructions:

Review the dispute resolution options and check off the considerations or conditions that best reflect your municipal situation. Once both municipalities have reflected on the considerations, come to an agreement on what process would best suit your situation.

1. Mediation involves using a neutral third party mediator to help the municipalities discuss and reach agreement on contentious and complex municipal services and issues. A mediator specializes in facilitating the dispute or disagreement to a mutual agreed upon solution. The parties make the decisions and have control of the outcome while the mediator manages the process, negotiation and dispute. Given the complexity and amount of people involved in an intermunicipal mediation, a co-mediator model is recommended. Having two mediators helps to effectively and efficiently manage both the process and interpersonal dynamics.

   This option should be considered or is most appropriate when:

   - The services to be negotiated:

     - ☐ Are complex
     - ☐ Need extra capacity to manage and guide the process and discussion
     - ☐ Need additional expertise
     - ☐ Has history of conflict or disagreement

   - The relationship has:

     - ☐ Mid to low levels of trust
     - ☐ history of conflict on the service to be negotiated
     - ☐ previous intermunicipal disputes (i.e. land use, annexation & service)
     - ☐ personality conflicts

   Recommendation: Mediation is recommended when there has been a previous history of disagreement on the service/s to be negotiated or if you identified with one of the relationship issues above. Going to mediation early on or immediately when negotiating has proven to

help prevent the conflict from escalating and increases the likelihood of reaching an agreement.

Intermunicipal Mediation in Alberta has been used successfully for 20 years and has a 90 per cent success rate of reaching agreement.

- Tip: Mediator's Report - At the conclusion of the mediation, the mediator can provide a mediator's report on what issues the parties have reached an agreement on and what issues there is disagreement. This should be determined at the outset of the mediation. This could help the parties narrow the specific issues to go to an arbitrator and reduce the cost of arbitration. The mediator's report can also provide guidance to the arbitrator on the principles that were agreed upon in the mediation.

2. Med-arbitration is a process where the parties agree that the individual involved in the mediation can arbitrate any outstanding issues not resolved in the mediation.

   Two common ways Med-arb processes can be conducted is by:

- Sole Practitioner: Hiring one person who is the mediator in the process and then will arbitrate if the parties cannot come to an agreement
- Team Approach: The other method is to have one mediator and one arbitrator working as a team. Whereby the arbitrator is involved with the joint meetings to help facilitate and the mediator is involved in the individual caucus and preparation meetings with the municipalities.

There are various ways to conduct a med-arb so talk to the various consultants who provide this service to see if it will work for you.

This option should be considered or is most appropriate when there are similar conditions as listed above in mediation and the municipalities:

- ☐ Anticipate that some issues in the dispute will remain unresolved in mediation and will require an arbitrated decision
- ☐ Are comfortable having the same person/people that mediated the issues arbitrate the decision
- ☐ Want a quick transition to arbitration if needed

3. Arbitration involves an outside party making a formal decision that resolves a dispute between the parties. Arbitration is a quasi-judicial process in which a third party renders a decision after receiving and hearing evidence from all involved. With few exceptions, the decision is binding on all parties.

   Arbitration is an effective option to resolving disputes or differences when all or some of the following conditions exist:

   When the municipalities:

   - ☐ have attempted mediation
   - ☐ fully understand the other perspective on the dispute
   - ☐ understand where they have agreement and disagreement
   - ☐ have reached an impasse

   In most intermunicipal disputes, attempting mediation is recommended because there is a 90 per cent success rate over the last 20 years when municipalities have attempted mediation.

4. Arb-Med is a process when the arbitrator has the legislative ability to mediate the dispute or aspects of a dispute. The Arb-Med process allows the arbitrator to determine with the parties if a mediation would be appropriate.

   This option should be considered when there are similar conditions as listed above under Mediation, med-arb, and the municipalities:

   - ☐ Anticipate that some issues in the dispute could be resolved in mediation and just require a few months to resolve them
   - ☐ Are comfortable having the same person/people that mediated the issues then arbitrate the decision
   - ☐ Want a quick transition from arbitration to mediation and back to arbitration

   After filling out the checklist proceed to question 5 on the dispute resolution options consideration tool on page 43.

Appendix B: Selecting a practitioner

To assist you in choosing the mediator(s); arbitrator; med-arbitrator(s) or arb-mediator who best fits your needs, review the following questions you may want to ask them regarding:

Experience

- What experience education, background, and designations do you have? (Does their track record indicate that he or she has the experience necessary to conduct this mediation, arbitration, med-arbitration or arb-mediation?)
- If you don't have substantive knowledge of these issues, how would you handle this knowledge deficit?
- Can you give us some examples of cases/situations similar to this one that you have worked in?

Personal Attributes

- Have you signed/endorsed a code of ethics?
- Can you describe your style as a mediator, arbitrator, med-arbitrator or arb-mediator?
- Is the practitioner a good communicator?
- Does the practitioner demonstrate integrity and honesty?
- Can they function independently?

Training

- What training do you have?
    - For mediators, 40 hours of basic mediation training is considered the acceptable minimum
    - It is recommended only those holding a Chartered Mediator, Arbitrator and Med-Arb designation (or equivalent) be selected for those corresponding dispute resolution processes.
- Have you been involved in ongoing professional development?

Process

- Who is responsible for meeting logistics, preparing agendas, keeping meeting notes?
- Do you have the time in your schedule to take on this work?
- How and where will the sessions be held? (i.e. in-person, video conferencing)
- What expectations do you have of each of the parties?
- Can you explain the process that you intend on using?
- If there is a team approach can both professionals work effectively together? Have they worked together in the past?

Fees

- How and what do you charge for your services?
- What might be a reasonable budget for time and cost for this intermunicipal dispute option?
- How much time will it take?
- Do you have separate rates for travel time?

Appendix C: Framework for Mediation

It is the group's responsibility to develop a document that sets out ground rules, protocols, and a framework for a process that will work for them. In order to prepare for that discussion, you will need to identify the concerns that the ground rules will address so that you will be comfortable with the process.

Some sample concerns could be:

- I'm afraid the group will get bogged down with…;
- These processes are always unfair because of…;
- What would happen if they did…; and
- I need to be assured that I will be heard and respected.

The agreement generally includes the following items:

- Purpose of the group (why we exist, the task at hand);
- Structure of the group (the use of observers or alternates);
- Timelines to complete the mediation;
- Decision-making process;
- Terms of confidentiality;
- Media contact (if, when and how contact will be made);
- Expenses (how costs will be shared or handled);
- Meeting procedures;
- Definitions of consensus; and
- The mediator(s) involved.

What suggestions do you have for each item? What other items should be added?

_____
_____
_____
_____
_____
_____
_____
_____
_____

Mediation Frequently Asked Questions

How is mediation different from organizing a discussion ourselves?

Mediation is different because:

- A mediator manages the process for you, allowing participants to fully take part in the discussions;
- The mediation process provides a structure for discussions in a safe and respectful environment, thus a productive exchange of information can occur;
- Mediation is typically confidential and without prejudice so you can have candid discussions without being concerned that admissions made may be used later in an adjudicative process; and
- The mediation process can allow each party to understand the other party's point of view. Understanding does not necessarily mean agreement, but it can help build consensus.

Isn't it faster to go to the Municipal Government Board or an arbitrator and get a decision right now?

- Not all issues that arise between municipalities can be dealt with by the Municipal Government Board or an arbitrator, but if it does go to the Board or an arbitrator, it can still take significant time depending on its complexity.
- Preparing for a hearing can be time consuming and costly.
- Pre-hearing preparations, and legal challenges can take six months or more.

What does it cost to hire a mediator?

- The rates will vary, but typically range upward from $200 per hour, plus expenses.
- Funding grants from Alberta Municipal Affairs generally cover a portion of the mediator costs, while the other two-thirds is split between the parties.

How are expenses handled in mediation?

- Municipalities determine how they are going to pay for the mediation.

Do our administrative support people take part?

- Sometimes chief administrative officers, chief financial officers, and municipal staff that have subject matter expertise are present.
- You decide whether these people have a voice at the table, or act only as a resource.

Some of our issues are quite technical. Can the mediator help with these?

- The mediator can help you decide how you reach agreement on technical questions. This can include who to consult, how you will abide by the advice, whether outside legal opinions are required, or an agreement to use technical information that already exists.
- However, the mediators will not provide technical advice themselves.

Can our full council take part in the mediation?

- It's possible to have the whole council present during mediation, but generally it's more efficient to have representatives from council attend.

If the full council is not represented, doesn't the proposal risk being voted down when it goes to council for approval?

- This is certainly a consideration. However, it can be cumbersome to have full representation from both councils at the mediation, so it's your decision how to proceed.
- One option may be to have the mediation team regularly report to council so all of council is kept informed, and can provide their feedback as the negotiations progress.

How much time will be spent in mediation?

- Every issue is different, so municipal mediations have varied from half-a-day to forty days.
- Scheduling mediation meetings in advance helps everyone commit to the process. Meeting regularly keeps the momentum going.

How many mediators are typically required?

- We suggest choosing two mediators since this can ensure everyone is heard when managing a large group discussion.

Can we meet with the mediator before we have joint discussions?

- Each mediator has their own way of working, but typically mediators will meet separately with each party at least once to discuss the preparations for mediation.

What is an "Agreement to Mediate"?

- An "Agreement to Mediate" is a formal, signed contract between the parties, and includes a description of the expectation and role of the mediator(s) and the participants. The agreement outlines how the parties will share expenses, sets out confidentiality guidelines, and may indicate whether the parties want the agreement to be legally binding or not. The agreement also states that the mediator does not give technical or legal advice, and will not be called as a witness by either party.

Why is it important to include confidentiality in an agreement?

- The parties generally agree that discussions during and after mediation are confidential.
- This allows for candid discussions during the process, making mediation more productive.

Is there a difference between confidentiality and "without prejudice"?

- Yes. When parties commit to confidentiality, they are agreeing that discussions during the mediation will only be shared as they have outlined in the Agreement.
- For example, the parties may agree to issue a joint media release on their progress, or may establish how and when to report to council. The term "without prejudice" is an aspect of confidentiality, and means that neither party can make a case against the other by sharing these discussions in court or at a hearing.

Arbitration Frequently Asked Questions

What is the cost of arbitration?

- There are three main areas of costs in an arbitration: arbitrator or arbitral panel, preparation and relationship.
- The greater the complexity and number of issues to be resolved will result in higher overall cost to each municipality.

Arbitrator/arbitral panel costs

- It is best to talk to potential arbitrators and legal council to help estimate the cost for the arbitrator and legal preparation costs.
- According to the Canadian Arbitration Association, the cost of arbitration can range from $250 to $800 per hour, plus applicable taxes depending on the arbitrator and the location of the arbitration. Many arbitrators have also set half and full-day rates.

Preparation Costs

- The largest cost for arbitration will be in each municipality's preparation for it. These costs often include individual municipality's legal and expert advice costs along with staff and council time.
- The preparation cost of arbitration depends on the complexity, scope and number of issues that need to be resolved.

Relationship costs

- Municipalities report that their relationships are significantly strained after going to a tribunal or arbitration due to the adversarial nature of the process.

Where can I find an arbitrator?

- Alberta Municipal Affairs has a roster of arbitrators, med/arb professionals that municipalities can select from. This roster is a resource and municipalities do not have to choose an arbitrator off the roster. Alberta Municipal Affairs' roster is available online at: www.alberta.ca/mediator-and-arbitrator-rosters.aspx.
- Arbitrators can also be found through the ADR Institute of Alberta at: www.adralberta.com/directory

How much time does it take to complete an arbitration?

- Arbitrations can take 3 to 10 months to complete depending on the complexity of the issues in dispute and the amount of preparation time the parties require to get their evidence and case together.

How many arbitrators are typically required to conduct an arbitration?

- Depending on the situation and complexity of the dispute, parties may want to choose a single arbitrator to make a decision or create a panel with a chair to hear the evidence.
- When a panel is chosen, it typically consists of 3 members including the Chair as the lead.
- A most common reason for adding more than one arbitrator is to add expertise to the arbitral panel.

Who represents the municipalities in an arbitration?

- The parties introduce their evidence to the Arbitrator through their witnesses and experts. The parties' legal representatives speak to the Arbitrator and put questions to the witnesses on behalf of each of the parties. If legal counsel is not selected then the party appoints its representative among them and that person speaks to the Arbitrator and puts questions to the witnesses.